

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

JOE L KOMAREK
Claimant

APPEAL NO. 07A-UI-05014-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SPHERION ATLANTIC ENTERPRISES LLC
Employer

OC: 03/25/07 R: 02
Claimant: Respondent (4)

Section 96.5(1)(a) – Voluntary Separation to Accept New Employment
Section 96.5(3)(a) – Refusal of Suitable Work
Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Spherion Atlantic Enterprises filed a timely appeal from the May 7, 2007, reference 06, decision that allowed benefits. After due notice was issued, a hearing was held on June 4, 2007. Claimant Joe Komarek participated. Client Service Manager Jan York represented the employer. The administrative law judge took official notice of the Iowa Workforce Development record of benefits disbursed to the claimant. The parties waived formal notice on the issues of whether the claimant had refused a suitable offer of employment on March 22 or 24 and whether the claimant had been able and available for work since March 22.

ISSUE:

Whether the claimant separated from the employment for a reason that disqualifies him for unemployment insurance benefits.

Whether the claimant refused a suitable offer of employment.

Whether the claimant had good cause to refuse a suitable offer of employment.

Whether the claimant has been able and available for work since March 22, 2007.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Joe Komarek established his employment relationship with Spherion Atlantic Enterprises temporary employment agency on October 18, 2006 and was placed in a full-time, temp-to-hire assignment at EDS on that date. The client business was located on the South side of Des Moines. The assignment was a quality control position that paid \$9.00 per hour. The assignment hours were 7:00 a.m. to 3:00 p.m., Monday through Friday, with occasional Saturdays.

On March 22, 2007, Mr. Komarek notified Spherion Client Service Manager Amber Williams that he had accepted different full-time employment that was scheduled to begin on April 2, 2007. Mr. Komarek told Ms. Williams that his last day with Spherion would be March 30, 2007.

On March 22, shortly after Mr. Komarek notified Ms. Williams of his quit, Branch Manager Kelly Riehle called Mr. Komarek to offer him a new, temp-to-hire assignment. Ms. Riehle told Mr. Komarek that the position would pay \$11.00 per hour, would be full-time and would be located on the West side of Des Moines. Ms. Riehle did not discuss with Mr. Komarek the hours or shift Mr. Komarek would be assigned to work. Mr. Komarek told Ms. Riehle that he was not interested in another temp-to-hire assignment because he had accepted full-time, permanent employment.

On March 23, Mr. Komarek went to Spherion after he finished his shift at EDS. At that time, Ms. Williams told Mr. Komarek that the Spherion would not have any work for him the following week.

On Saturday, March 24, Client Service Manager Jan York left a voice mail message for Mr. Komarek in which she indicated she had another temporary assignment she wanted to discuss with Mr. Komarek and requested a return call. Ms. York did not provide any details of the proposed assignment in her message. On Monday, March 26, Mr. Komarek responded to Ms. York's phone call and spoke with a Spherion representative, who told Mr. Komarek that Spherion did not have any work for him.

Mr. Komarek established an additional claim for benefits that was effective March 25, 2007 and received \$180.00 in benefits for the benefit week that ended March 31, 2007. Mr. Komarek did not continue his claim for benefits after that week. Mr. Komarek did in fact commence new full-time, permanent employment on April 2, 2007 and continues in that employment.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-1-a provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department. But the individual shall not be disqualified if the department finds that:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The evidence in the record indicates that Mr. Komarek voluntarily separated from Spherion Atlantic Enterprises in good faith for the sole purpose of accepting other employment. The evidence indicates that Mr. Komarek did in fact accept an offer of employment from the new employer and performed services for the new employer. The separation to accept new employment would not disqualify Mr. Komarek for unemployment insurance benefits. See Iowa Code section 96.5(1)(a). Mr. Komarek was eligible for benefits, provided he was otherwise eligible. Spherion shall be relieved of charges for benefits paid to Mr. Komarek, and any benefits relating to wage credits Mr. Komarek earned from employment with Spherion shall be charged to the unemployment compensation fund. See Iowa Code section 96.5(1)(a).

The evidence indicates that the employer offered Mr. Komarek a suitable new assignment on March 22, 2007. However, the evidence indicates that Mr. Komarek had good cause to refuse the offer of employment. See Iowa Code section 96.5(3)(a). The evidence fails to demonstrate any additional bona fide offers of employment.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

871 IAC 24.23(23) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

The evidence establishes that effective April 2, 2007, Mr. Komarek's new full-time employment made him unavailable for other employment. Accordingly, effective April 2, 2007, Mr. Komarek no longer met the work availability requirements of Iowa Code section 96.4(3) and, therefore, would no longer be eligible for benefits. The evidence indicates that Mr. Komarek's eligibility for benefits was limited to the benefit week of March 25 to March 31, 2007. In the event that Mr. Komarek subsequently separates from the new employment, his eligibility for benefits will be redetermined.

DECISION:

The Agency representative's May 7, 2007, reference 06, decision is modified as follows. The claimant voluntarily separated from the employment in good faith for the sole purpose of accepting other employment. Based on the separation, the claimant was eligible for benefits, provided he was otherwise eligible, and the employer's account shall be relieved of charges. During the week of March 25-31, 2007 the claimant was available for work and, therefore, eligible for benefits. Effective April 2, 2007, the claimant's full-time employment made him unavailable for other work and, therefore, the claimant was no longer eligible for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw